

61.522 Definitions -- Voluntary and involuntary cessation of participation by employer in retirement system -- Effects of on employees, employers, and system -- Statutes and administrative regulations that prevail regarding participation.

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
 - (a) "Active member" means a member who is participating in the system;
 - (b) "Employer" means the governing body of a department, as defined by KRS 61.510;
 - (c) "Employer's effective cessation date" means:
 1. The last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; or
 2. For Kentucky Employees Retirement System employers making an election to cease participating under the provisions of subsection (8) of this section, it shall be June 30, 2021; and
 - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
 - (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section;
 - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705; or
 - (c) If the employer is participating in the Kentucky Employees Retirement System, request an estimate of the cost of voluntarily ceasing participation in the system prior to officially making a request to cease participation. For those Kentucky Employees Retirement System nonhazardous employers who are considering ceasing participating in the system under the provisions of subsection (8) of this section on June 30, 2021, the request for an estimate to voluntarily cease participating must be made prior to December 31, 2019, and the estimate shall be provided to that employer within sixty (60) days of the request, except that no estimate shall be required to be provided prior to January 31, 2020;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System as provided by subsection (2)(a) of this section:
 1. The employer shall adopt a resolution requesting to cease participation

in the system and shall submit the resolution to the board for its approval. The board shall not be able to deny a resolution to cease participation in the Kentucky Employees Retirement System for any employer who seeks to voluntarily cease participation in the system as provided by subsection (8) of this section;

2. Except as provided by subsection (8)(d) of this section, the cessation of participation in the system shall apply to all employees of the employer;
3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan but, for Kentucky Employees Retirement System employers with effective cessation dates occurring on or after June 30, 2020, the alternative retirement program shall not include a defined benefit plan which by its nature can have an unfunded liability;
5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C. sec. 403(b) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may, except for those employees continuing to participate in the system as provided by subsection (8)(d)2. of this section, seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation;
6. The employer shall pay to the system by lump sum or in installments as provided by subsection (8) of this section, if eligible, the full actuarial cost, except as provided by subsection (8)(g)4. of this section, of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. If the employer makes an election for employees to continue to participate in the system as provided by subsection (8)(d)2. of this section, the cost shall also include the present value of future normal costs of those employees who will continue to participate in the system after the employer's effective cessation date. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as

provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid or the installment payments have commenced; and

7. Kentucky Employees Retirement System employers ceasing participating under the provisions of subsection (8) of this section who elect to pay their actuarial costs by a lump sum shall pay the entire costs, in one (1) or more payments, so that the full actuarial costs are paid by June 30, 2022. Interest on the unpaid principal amount of the full actuarial costs shall begin on July 1, 2021, and accrue until the full actuarial costs are paid. If the ceasing employer makes a payment prior to July 1, 2021, the ceasing employer shall receive a credit against their full actuarial costs to be determined as of June 30, 2021, that is equal to the amount of the prior payment plus interest for the period beginning on the date of the prior payment and ending on June 30, 2021. If a final payment is due by June 30, 2022, for an employer who has made a payment or payments on or before June 30, 2021, it shall be equal to any unpaid actuarial costs due plus interest as of the date of final payment. If the payment or payments made by the ceasing employer exceed the final full actuarial costs of ceasing participation, the employer shall by June 30, 2022, be refunded an amount equal to the overpayment plus interest for the period beginning on the date of the overpayment and ending on the date the refund is paid to the employer. If the ceasing employer fails to make the full lump-sum payment by June 30, 2022, the ceasing employer shall make installments as provided by subsection (8)(g) of this section, and the ceasing employer shall have the costs recalculated based upon making installment payments as provided by this section and shall be required to make up any missed installment payments as determined by the system. For purposes of this subparagraph, "interest" shall be equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs.
- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
 2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
 3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance

fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

A Kentucky Employees Retirement System employer who ceases participation in the systems under this paragraph shall not establish or contribute to on behalf of its employees a defined benefit plan which by its nature can have an unfunded liability;

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;
- (5) If an employer has ceased participation in the system as provided by this section:
 - (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
 - (b) Except as provided by subsection (8)(d)2. of this section, employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph, except as provided by subsection (8)(d)2. of this section, shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705, shall:
 1. Retain his or her accounts with the Kentucky Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705;
 2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
 3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible;
- (6) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of

Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System, except that:

- (a) Any employer who is a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation; and
 - (b) Local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and the Kentucky Higher Education Student Loan Corporation may voluntarily cease participation in the Kentucky Employees Retirement System solely under the provisions and requirements of subsection (8) of this section;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than:
- (a) Except as provided by paragraphs (b) to (e) of this subsection, the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);
 - (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do not make an election for their employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section;
 - (c) Five and one-quarter percent (5.25%) for university and community college employers or three and one-half percent (3.5%) for all other Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
 - (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section; or
 - (e) Three percent (3%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by

installment payments and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;

- (8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2021, except in the case of university or community college employers it shall be prior to January 1, 2021, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:
- (a) The board shall accept any election to cease participation on or before June 30, 2021, and the employer's effective cessation date shall be June 30, 2021. Prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers, the employer may rescind a previously submitted election to cease participation;
 - (b) Nonhazardous employees hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that ceasing employer;
 - (c) Nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014, and who are participating in the hybrid cash balance plan as provided by KRS 61.597, shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, the employee shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section. A nonhazardous employee covered by this paragraph who elects to transfer his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS 61.597, receive a transfer of the employee's accumulated account balance, including the entire accumulated employer credit, regardless of the employee's years of service credit;
 - (d) 1. The employer shall, in the resolution submitted in accordance with subsection (3)(a)1. of this section, make an election as to whether or not nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems prior to January 1, 2014, who are participating in the systems administered by Kentucky Retirement

Systems through the employer, will continue to participate in the system after the employer's effective cessation date.

2. If the employer makes an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees will continue to contribute and earn service credit in the systems for as long as they remain employed by the employer in a regular full-time position that is eligible to participate in the systems, except in the event the employer fails to make installment payments as provided by KRS 61.675(4). Any costs for the present value of future normal costs of the employees covered by this subparagraph who will contribute and earn service in the system after the employer's effective cessation date shall be included in the cost calculation established by subsection (7) of this section.
 3. If the employer does not make an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, these employees shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section;
- (e) The cost of ceasing participating to an individual employer shall be equal to the cost determined under subsection (7) of this section and shall include the costs of those employees who continue to participate in the system as provided by paragraph (d)2. of this subsection;
 - (f) The employer may pay the full actuarial cost of ceasing participation by lump-sum payment or in installments as provided by paragraph (g) of this subsection;
 - (g) If the employer elects to pay the costs in installment payments, the cost of ceasing participation as provided by this subsection shall be financed by the systems using the following method:
 1. Annual payments occurring on or after July 1, 2021, shall be a set dollar value and shall be paid in monthly installments. In fiscal year 2021-2022, the set dollar value shall be equal to the higher of the actual contributions paid by the employer in fiscal year 2020-2021 or the annualized average of the creditable compensation reported to the systems by the ceasing employer over the last sixty (60) months occurring prior to July 1, 2019, for which contributions were paid by the ceasing employer, and multiplied by an employer rate of forty-nine and forty-seven one-hundredths percent (49.47%). Annual payments, for fiscal years occurring on or after July 1, 2022, which shall be paid monthly, shall be increased by one and one-half percent (1.5%) annually and shall be paid until the cost as provided by subsection (7) of this section and as adjusted annually by subparagraphs 2. and 3. of this

paragraph are paid in full or until an employer as described by subparagraph 4. of this paragraph has paid for thirty (30) years from the effective cessation date;

2. Interest shall be assigned to the principal amount annually beginning on July 1, 2021, and for each July 1 thereafter, that is equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs;
3. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer makes an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)2. of this subsection, then the systems shall adjust the base value for the first annual payments occurring on or after July 1, 2021, in order to keep the maximum period of installments to thirty (30) years; and
4. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer does not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)3. of this subsection, the employer shall pay the amount determined by subparagraph 1. of this paragraph for thirty (30) years from the effective cessation date and no additional costs shall be billed to a ceasing employer after the conclusion of the thirty (30) year period nor shall the employer be subject to adjustments under subparagraph 3. of this paragraph. The system may request in future biennial executive branch budgets the additional funding needed on an annual basis to fully pay off the installments at the conclusion of the thirty (30) year period for the employers described by this paragraph, and it is the intent of the General Assembly to pay the additional funding needed by appropriation in the biennial executive branch budget.

An employer ceasing participation who is making installment payments as provided by this paragraph may at any time pay off a portion of the remaining balance or the entire remaining balance and shall not be charged any interest for periods beyond the pay-off date for the balance that is paid off;

- (h) Kentucky Employees Retirement System employers eligible to cease participation under the provisions of this subsection who do not make an election to cease participation in the system prior to May 1, 2021, or prior to January 1, 2021, in the case of university and community college employers, shall be required to pay the full actuarially determined contributions

established by KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2021; and

- (i) Kentucky Employees Retirement System employers who elect to cease participation in the system as provided by this subsection who are currently receiving a distribution of general fund appropriations in the biennial executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I, G., 4., (5), 2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169, Part I, G., 9., (2) to help pay employer contributions to the system shall continue to receive the same level of distribution of general fund appropriations to help pay the costs of ceasing participation until such time that the employer's full actuarial costs of ceasing participation are paid off;
- (9) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section;
- (10) (a) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth and the Kentucky Retirement Systems, including board members and employees of the Kentucky Retirement Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer related to the employer's cessation of participation as set forth in this section.
- (b) Any employer who is voluntarily ceasing participation under the provisions of subsection (8) of this section shall be required to pledge any security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money to the costs of ceasing participation until all costs of ceasing participation are paid in full; and
- (11) Notwithstanding any other provision of statute to the contrary, the provisions of KRS 61.510 to 61.705, and the administrative regulations promulgated thereunder, shall prevail regarding any question of participation in the systems of any employer or any employee of an employer who ceases participation in the Kentucky Employees Retirement System.

Effective: April 1, 2021

History: Amended 2021 Ky. Acts ch. 28, secs. 1 and 2, effective March 17, 2021; and ch. 83, secs. 3 and 4, effective March 23, 2021. -- Amended 2020 Ky. Acts ch. 79, sec. 20, effective April 1, 2021; and ch. 82, sec. 3, effective April 8, 2020. -- Amended 2019 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 1, effective July 24, 2019. -- Repealed and reenacted 2018 Ky. Acts ch. 207, sec. 157, effective April 27, 2018. -- Amended 2017 Ky. Acts ch. 104, sec. 1, effective March 21, 2017. -- Created 2015 Ky. Acts ch. 28, sec. 1, effective June 24, 2015.

Legislative Research Commission Note (3/23/2021). This statute was amended by 2021 Ky. Acts chs. 28 and 83, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (4/8/2020). This KRS section was amended by Section 3 of 2020 Ky. Acts ch. 82. Section 5 of that Act states, "The amendments to Section 3 of this Act [this statute] shall be retroactive back to April 1, 2020."

Legislative Research Commission Note (7/24/2019). 2019 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 5, provides: "A Kentucky Employees Retirement System employer ceasing participation under the provisions of subsection (8) of Section 1 of this Act [this statute] may finance the aggregate amount necessary to pay the full actuarial cost of ceasing participation, plus any associated transaction costs, and the amount necessary to fund any required reserves. The financing may be undertaken by the issuance of bonds by the ceasing employer, or its agency or instrumentality, through financing agreements with the Kentucky Asset/Liability Commission or other available sources of funding. The sale of any bonds or entering into of any financing agreement or other source of funding may be by public or private negotiated sale."

Legislative Research Commission Note (4/27/2018). This statute was amended by 2018 Ky. Acts ch. 170, sec. 1 and repealed and reenacted in ch. 187, sec. 7. However, 2018 Ky. Acts ch. 207, secs. 158 and 159 provided that, notwithstanding any statutory language to the contrary, no part of the amendments to this statute in 2018 Ky. Acts ch. 170, sec. 1 are to be codified.

Legislative Research Commission Note (3/21/2017). 2017 Ky. Acts ch. 104, sec. 2 provided: "Notwithstanding the provisions of Section 1 of this Act (this statute), any employer who has filed the paperwork to voluntarily cease participation prior to the effective date of this Act (March 21, 2017) shall have their full actuarial cost calculated based upon the assumptions and methodology established by the Kentucky Retirement Systems' board, except that the assumed investment return assumption, which is also the rate used to discount liabilities, shall be four and five-tenths percent for employers paying by lump-sum and four percent for employers paying by installments, and such employers electing to pay in installments shall be eligible to pay the full actuarial cost in installments over a period of time determined by the board, not to exceed 20 years, with interest at the actuarially assumed rate of return."

Legislative Research Commission Note (3/21/2017). 2017 Ky. Acts ch. 104, sec. 3 provided: "Notwithstanding KRS 61.661, Kentucky Retirement Systems shall provide the employer ceasing participation as provided by Section 2 of this Act, an individual member breakdown of the actuarial cost attributable to each current and former employee of the employer for purposes of allocating the costs among organizational units of the employer."

Legislative Research Commission Note (6/24/2015). During codification, the Reviser of Statutes has changed the numbering of subsections of this statute from the way it appeared in 2015 Ky. Acts ch. 28, sec. 2. None of the text of the subsections was changed.